IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 895 OF 2005

WITH

CIVIL APPLICATION NOS. 1052 OF 2005 AND 1370 OF 2005

Maharashtra Police Co-op. Hsg.
Federation (Ltd.) Mumbai. .... Appellant

Versus

Saraf Choudhari Nagar Shri Ganesh Mandir Samiti ...Respondent

Mr. Y.S. Jahagirdar, Senior Advocate, with Mr. V.S. Kapse for the Appellants.
Mr. A.Y.Sakhare, Senior Advocate, with Mr. J.J.Shah for the Respondents.

CORAM: **DR. D.Y. CHANDRACHUD, J.**
DATE: **DECEMBER 21, 2005**.

P.C.

The employees of the Police Department formed and registered a Co-operative Society with the object of providing residential accommodation to its members. The State Government allotted a plot of land to the Society bearing CTS No. 755 C and CTS No. 755 E near Western Express Highway at Kandivli (East), Mumbai. The Society implemented a housing scheme in which 41 buildings were constructed for the residential use of its members. The original Society has been permitted to be divided into 13 new Co-operative Societies and there is a Federal Society which is to have the right, title and interest on the plot of land allotted

by the State Government.

2. The case of the Appellant is that in July, 1998, an application was made by the Respondent for the construction of a temple on a portion of the open land belonging to the Appellant. The Appellant accordingly gave its No Objection on 14th July, 1998 to the construction of a temple, subject to certain conditions including the grant of approval by the Municipal Corporation to the plan. The dispute in the present case relates to an open space marked as a recreation ground and denoted as RG-8. The open space is situated between buildings B-20 and B-21 and admeasures 289.647 sq.mtrs. The grievance of the Appellant is that the Respondent commenced excavation on the open plot of land near the temple which had been constructed in the meantime and upon enquiries it was learnt that the local Municipal Councillor was assisting the Respondent in putting up a compound wall around the recreation ground. The Appellant objected thereto and it is the case of the Appellant that its office-bearers were threatened against causing any interference in the work of excavation. The City Civil Court was moved in a Suit on 29th June, 2005 on the foundation that it is the Appellant who has right, title and interest in respect of the suit premises and that the Respondent herein is attempting to encroach upon the premises by constructing a compound wall. Accordingly, the Appellant sought a permanent injunction restraining the Respondent from entering upon and/or excavating or constructing the compound wall and from carrying any construction activities in the portion marked as RG 8 admeasuring

289.647 sq.mtrs.

3. The Learned Trial Judge was moved for urgent ad-interim orders in a Motion on 2nd July, 2005. The Learned Trial Judge noted that the suit premises consisted of a recreation ground, RG 8, upon which a temple had been constructed. According to the respondent, the compound wall had already been constructed and only plastering was required to be done. The Learned Trial Judge specifically observed that though the Respondent intended to put up a grill above the compound wall, the Court was not inclined to permit this being done. However, the Respondent was permitted to only plaster the compound wall.

4. Subsequently, on 23rd August, 2005, the Learned Trial Judge took serious note of the conduct of the Respondent in proceeding ahead with the work despite the specific direction of the Court permitting the Respondent only to complete the plastering of the compound wall. The following observations of the Learned Trial Judge need to be emphasised.

> ".....the facts remains that they ought to have taken permission of the Court to do anything on the property since the matter is pending before the Court and contention of ld. Adv. For defendants that covered portion is already there is not proper in view of clear difference shown in the old photographs..... the Defendants will have to explain this

> situation and the necessary orders will be passed in this regard at the time of deciding motion. In view of conduct of defendants from time to time doing something new of property without permission of court it is necessary that the motion be decided at the earliest."

5. The Motion before the Trial Court was for an order of injunction restraining the Respondent from entering upon, excavating, or constructing the compound wall and from carrying any construction activities in the suit premises more particularly noted on the plan at Exh.E as RG8 and admeasuring 289.647 sq.mtrs. When the Motion came up for final hearing before the trial Judge, the Court observed that from the photographs it was seen that there was absolutely no compound wall in existence on 2nd July, 2005 and that between the date of the institution of the suit and when the Motion was finally heard, construction work had been carried out, misusing the undertaking furnished to the Court that no further construction work apart from the plastering of the compound wall would be carried out. In paragraphs 5 and 6, the learned trial Judge observed thus:

> "....that there was absolutely no compound wall in existence on 2/7/2005. During the pendency of hearing on ad-interim injunction and further till the notice of motion was finally heard on 24/8/2005, the Defendants have made a lot of progress in the said construction and over and above they have put cement sheets on top of the pillars that are constructed.

> 6. It is apparent from the face of the record that the Defendants have misused the undertaking given by them that they will only plaster the compound wall and not construct further and the Court hearing the parties on ad-interim relief (my Ld. Predecessor Judge) was pleased to allow the Defendants to plaster the compound wall which has been constructed at or around the time of filing of the suit."

6. Having said this, the Learned Trial Judge dismissed the Motion on the ground that by the time that the Motion had been finally heard, the relief which was sought by the Appellant had become infructuous since the construction of the compound wall had been completed together with putting up of pillars and asbestos roof thereon. This Court was moved in the present Appeal from Order in order to challenge the judgment and order of the Learned Trial Judge dated 26th August, 2005.

7. On 10th October, 2005, a learned single Judge of this Court, while admitting the Appeal, directed the Learned Trial Judge to decide the issue of restoring the *status quo ante* in respect of the construction work which had been carried out by invoking its powers under Section 151 of the Code of Civil Procedure, having regard to the law laid down by the Supreme Court in *Delhi Development Authority* vs. *Skipper Construction Co. (P) Ltd. and Anr.* [(1996) 4 SCC 622].

8. In response to the aforesaid direction, parties appeared before

the Learned Trial Judge and by an order dated 5th December, 2005, the Trial Court maintained the earlier order. The Learned Trial Judge observed as follows:

> " ...This is a lingering doubt in the mind of this court as to whether this court can exercise its powers under section 151 of CPC with the same ease as can the Hon'ble High Court. It is normally understood that this court has to restrict its powers in granting reliefs to the parties who specifically pray for such reliefs and cannot go beyond the prayer clauses."

The Trial Court was of the view that an expeditious trial is the only recourse " to bring the matter back to *status-quo ante* if the plaintiffs succeed in proving their case".

9. On behalf of the Appellant it has been submitted that the Learned Trial Judge has been completely in error first in dismissing the Motion, when the facts as found by that Court would show that construction activities have been carried out in clear defiance of the orders of the Trial Court. In these circumstances it was submitted that the Court is not powerless to pass an appropriate order to render complete justice and that in *Delhi Development Authority* vs. *Skipper Construction (*supra), the Supreme Court has observed that when an act is done in violation of a stay or injunction, it is the duty of the Court to set the wrong right and not allow the perpetuation of the wrong

doing. Furthermore, it was submitted that the plot of land is denoted as a recreation ground and the manner in which the Respondent has carried out the work of construction thereon is high-handed and contrary to law.

10. On the other hand it was submitted on behalf of the Respondent that the order passed by the Learned Trial Judge should be affirmed and that it should be appropriate to expedite the trial of the Suit.

11. The facts which have been adverted to in the earlier part of this judgment demonstrate the high-handed manner in which a plot of land which has been denoted as a recreation ground has been utilised for carrying out a construction without authority of law and in breach of the order of injunction passed by the Trial Court. There is no dispute about the fact that the Appellant is the allottee of the land and that the land is a part of a larger holding which is allotted by the State Government for the construction of residential tenements for personnel belonging to the Police Service. RG 8 which is the plot of land in dispute is denoted as a recreation ground. At the highest, the permission which was granted by the Appellant to the Respondent on 14th July, 1998 (Exh. D) was a No Objection for constructing a temple subject to the due approval of the Municipal Corporation. Whether, even this permission could have been lawfully granted is separate matter altogether but even as it stands, the letter of permission does not even remotely authorise the conversion of a

recreational ground by the carrying out of a construction that would cover the entire plot of land. But, what is extremely disturbing is the manner in which a systematic effort was made to carry out the construction in defiance of the orders of the City Civil Court. When the City Civil Court was moved on 2nd July, 2005, it is evident that by its order, the Trial Court declined to permit the Respondent to even put up a grill above the compound wall. The only work which was permitted was of plastering of the compound wall. Thereafter, when the matter came up before the Trial Court, a statement was made on behalf of the Respondent this time that the pillars were already in place. By 6th August, 2005, the entire compound wall had been covered with an asbestos roof which rested upon the pillars which were put up. The photographs which are on the record clearly show the manner in which the construction has been extended between 28th June, 2005 and until 22nd August, 2005 in breach of the orders of the Trial Court. The Learned Trial Judge noticed this fact on 23rdAugust, 2005. When the Motion came up for final hearing, the Court perceived itself to be helpless since the construction had been completed. The observation of the Learned Trial Judge in his order dated 26th August, 2005 to the effect that the relief had become infructuous “in the absence of ad-interim relief” clearly overlooks the position that there was an ad-interim order in operation from 2nd July, 2005 by which the Respondent had been prohibited from carrying out any further work save and except for the plastering of the compound wall.

12. Courts in such situations are not powerless to deal with a brazen violation of judicial orders. In such a situation, the Court does not merely have the enabling power under Section 151 of the Code of Civil Procedure to direct the restoration of the *status quo ante* when the construction work has been carried out in breach of the orders of the Court but it is plainly the duty of the Court to do so. Respect for the judicial process lies at the heart of the rule of law and unless Courts take a strict view of a defiance of orders, litigating parties are liable to carry the impression that it is open to them to take law into their own hands and to await judgments in the distant future. In such a situation, it is the plain duty of the Court to intervene and to direct that the work which has been carried out in defiance of the orders of the court must be removed forthwith. The Supreme Court has emphasised this in its judgement in *Delhi Development Authority* (supra) in paras 17, 19, 20 and 21. It would be necessary to record that during the course of these proceedings I had given an opportunity to the respondent to restore the position of the recreation ground by removing the construction of the compound wall, the pillars and asbestos sheet roof that has been carried out thereon. At this stage, it is stated before the Court on behalf of the Appellant that the Appellant does not seek the removal of the temple at the present point of time. However, on instructions, the Court has been informed that the Respondent is not ready and willing to do so. In these circumstances, the Court is constrained to exercise its jurisdiction to rectify the illegality which has taken place in clear defiance of the orders of the Trial Court.

13. The Appeal shall accordingly stand disposed of by directing the Respondent to forthwith remove (i) the compound wall, (ii) the pillars constructed on the recreation ground, and (iii) the asbestos sheet roof. At this stage, it is also clarified that there is no direction in regard to the temple which has been constructed in view of the specific statement which has been made before the Court by the Learned Counsel appearing on behalf of the Appellant. The work of restoration shall be carried out within a period of two weeks from today failing which it would be open to the Appellant to do so, if necessary, with the aid of police help. The Samta Nagar Police Station shall render all necessary assistance to ensure due compliance of the order of the Court.

14. The Appeal is accordingly allowed in the above terms.

15. Stay of this order is refused.

16. In view of the disposal of the Appeal, the Civil Applications do not survive and the same are accordingly disposed of. Rule in C.A. No. 1052 of 2005 is discharged.